

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Griggs, Inc.)

Phenix City, Russell County, Alabama)

Facility ID No. 206-G096-X001)

CONSENT ORDER

No. _____

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Griggs, Inc. pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Griggs, Inc. operates Griggs Bizzy Mart #5 (hereinafter, “facility”) located in Smiths Station, Lee County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, §§ 22-28-1 to 22-28-23, Ala. Code (2006 Rplc. Vol.).

4. ADEM Admin. Code R. 335-3-6-.07 (4) (a) states:

No owner or operator may transfer, cause, or allow the transfer of gasoline from any gasoline tank truck into any stationary storage tank subject to this Rule, unless the tank is equipped with a submerged fill pipe and the vapors displaced from the storage tank during filling are processed by a vapor balance system (Stage I) that will ensure the vapor line is connected before gasoline can be transferred into the tank.

5. August 20, 2008, the Air Division received an Air Permit application from Griggs, Inc. indicating that the facility was subject to ADEM Admin. Code R. 335-3-6-.07 and that a dual point vapor control system had been installed at the facility.

6. On October 22, 2008, Griggs, Inc. was issued Air Permit #206-G096-X001 based on the information documented in the Air Permit application.

7. On January 14, 2009, an inspection performed by ADEM personnel revealed that the gasoline storage tanks at the facility were not equipped with a dual point or any other type of vapor control system.

8. On February 12, 2009, Griggs, Inc. was issued a warning letter for allowing the transfer of gasoline from a tank truck into stationary storage tanks that were not equipped with a vapor control system. A written response to the letter was requested by March 12, 2009.

9. On February 26, 2009, the Air Division received a response to the warning letter. The response stated the following information. The facility was purchased in October 2007 from a previously permitted owner. In September 2008, Griggs, Inc. began making deliveries to their own facilities. Upon the initial delivery to this location, the driver questioned Griggs, Inc. concerning the absence of a Stage I Vapor Control System. Griggs, Inc. in turn questioned Barber Petroleum, the company responsible for installing the vapor recovery equipment, as to whether the facility was equipped with a vapor control system. Upon review of their records, Barber Petroleum responded that their information indicated that a vapor control system was in

place. Upon delivery to this location several weeks later, the driver again inquired about the vapor control system and stated that the vapor ports were capped off. No action was taken by Griggs, Inc. to ensure that a vapor control system was in place and working properly.

10. From the time of purchase of this location by Griggs, Inc. this station has not been equipped with any vapor control system; therefore, any gasoline delivered to this facility has not been delivered in compliance with the Department's rules and regulations governing Stage 1 facilities.

11. The response to the warning letter stated that Stage 1 Vapor Control equipment was installed on February 12, 2009.

12. Griggs, Inc. consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

13. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

11. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of

such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: During the transfer of gasoline from the tank truck into the gasoline storage tank, Griggs, Inc. failed to process the gasoline vapors through a vapor control system and allowed gasoline vapors to be emitted into the atmosphere.

B. THE STANDARD OF CARE: By not operating the tank truck in such a manner as to comply with the Permit, Griggs, Inc. did not exhibit a high standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: While there may have been some economic benefit to Griggs, Inc. for non-compliance, the Department is unable to quantify the benefit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts made by Griggs, Inc. to minimize or mitigate the effects upon the environment due to its non-compliance. By delaying installation of the equipment, additional vapors were allowed to escape into the atmosphere.

E. HISTORY OF PREVIOUS VIOLATIONS: There is no history of prior enforcement actions against Griggs, Inc. by the Department.

F. THE ABILITY TO PAY: Griggs, Inc. has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty

it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, Griggs, Inc., along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Griggs, Inc. agree to enter into this ORDER with the following terms and conditions:

A. Griggs, Inc. agrees to pay to the Department a civil penalty in the amount of \$4,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Griggs, Inc. agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. Griggs, Inc. agrees to submit a plan that details how it will help ensure that the vapor balance system is utilized during the transfer of gasoline from a tank truck into a gasoline storage tank not later than forty-five days from the effective date of this Consent Order.

D. Griggs, Inc. agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code R. 335-3-6-.07 and ADEM Admin. Code R. 335-3-6-.20 immediately upon the effective date of this Consent Order and continuing each and every day thereafter.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. Griggs, Inc. agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, Griggs, Inc. agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Griggs, Inc. also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Griggs, Inc. shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Griggs, Inc., including its contractors and

consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Griggs, Inc. and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Griggs, Inc., the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and Griggs, Inc. agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Griggs, Inc. shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and Griggs, Inc. agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Griggs, Inc. does hereby waive any hearing on the terms and conditions of same.

K. The Department and Griggs, Inc. agree that this Order shall not affect Griggs, Inc.'s obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and Griggs, Inc. agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and Griggs, Inc., agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The Department and Griggs Inc., agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and Griggs, Inc., agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Griggs, Inc. of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

GRIGGS, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Signed: _____